

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Rolf SKOLD

Appeal No.: 2008-2366

Application No.: 09/381,828

Confirmation No.: 004478

Filed: November 24, 1999

Art Unit: 1797

For: THE CHARACTERISATION OF PHYSICAL
AND CHEMICAL PROPERTIES OF A LIQUID
AND A DEVICE THEREFOR

Examiner: A. Soderquist

SUPPLEMENTAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

With respect to Appeal No. 2008-2366, in response to the Order (pursuant to 37 C.F.R. § 41.50(d)(2007)) of August 26, 2008, Appellants herein submit this Supplemental Brief to clarify any inconsistencies submitted in the previously submitted Appeal Brief (filed on April 30, 2007) and Reply Brief (filed on October 23, 2007). It is believed that no fee is due for filing this Supplemental Brief.

This Supplemental Brief contains **Remarks** that begin on page 2, and a replacement **Evidence Appendix**.

REMARKS

Appellants are relying upon declaratory evidence in rebuttal of the rejections under 35 U.S.C. § 103(a) as set forth in the previously filed Appeal Brief and Reply Brief. A replacement **Evidence Appendix** is herein attached (which replaces “Appendix B” of the Appeal Brief).

Appellants Are Relying Upon Declaratory Evidence

Appellants herein clarify that Declarations under 37 C.F.R. § 1.132 (hereinafter “Rule 132 Declarations”) are relied upon in rebuttal of the rejections under 35 U.S.C. § 103(a) as set forth in the previously filed Appeal Brief and Reply Brief. As stated on pages 15-16 and starting on page 51 of the Appeal Brief, Appellants intended to rely upon this declaratory evidence.

Thus, Appellants request that the Board consider the previously filed Appeal Brief and Reply Brief with the evidence of record.

37 C.F.R. § 41.37(c)(1)(ix)

The attached replacement **Evidence Appendix** complies with 37 C.F.R. § 41.37(c)(1)(ix) as follows.

The first relied upon Rule 132 Declaration was filed with a Supplemental Reply on February 16, 2006 (hereinafter “first Rule 132 Declaration”). The Examiner has entered this first Rule 132 Declaration into the record as seen from the Office Action dated May 8, 2006 (see PTOL-326 form and paragraph 5, page 8 of May 8th Office Action).

The second relied upon Rule 132 Declaration was filed with a Reply on August 4, 2006, which was resubmitted on August 25, 2006 due to missing pages (hereinafter “second Rule 132 Declaration”). The Examiner has entered this second Rule 132 Declaration into the record as seen from the Office Action dated October 31, 2006 (see PTOL-326 form and paragraph 5, pages 8-9 of October 31st Office Action).

Copies of the both Rule 132 Declarations are attached.

Conclusion

Appellants respectfully request the Board to consider the present Supplemental Brief in conjunction with the previously filed Appeal Brief and Reply Brief.

It is respectfully submitted that all claims on appeal in this application are allowable. Accordingly, favorable consideration and reversal by the Honorable Board of Patent Appeals and Interferences of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1, 2, 4-8 and 10-18 are respectfully solicited.

It is believed that no fee is due for filing this Supplemental Brief. However, if necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: SEP 11 2008

Respectfully submitted,



By _____
D. Richard Anderson
Registration No.: 40,439
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Appellant

Attachments: Evidence Appendix

Copy of Declaration under 37 C.F.R. § 1.132 previously filed on February 16, 2006 (2 pages)

Copy of Declaration under 37 C.F.R. § 1.132 previously filed on August 25, 2006 (4 pages)

EVIDENCE APPENDIX

Evidence in the form of two Declarations pursuant to 37 C.F.R. § 1.132 as entered by the Examiner and relied upon by Appellants is being submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Rolf SKÖLD

Application No.: 09/381,828

Confirmation No.: 004478

Filed: November 24, 1999

Art Unit: 1743

For: THE CHARACTERISATION OF PHYSICAL
AND CHEMICAL PROPERTIES OF A LIQUID
AND A DEVICE THEREFOR

Examiner: A. Soderquist

DECLARATION UNDER 37 C.F.R. § 1.132

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Rolf Sköld, do declare and say as follows:

1. I am a graduate of Lund University, Faculty of Technology in Lund, Sweden. I received my MSc in Chemical Engineering in 1973 and finalized my PhD studies with a doctoral degree in physical chemistry (thermochemistry) in 1976 at the same university. I held a post doctoral position at the University of Colorado at Boulder in 1976-1977.
2. I reside at Dragonvägen 11, SE-444 41 Stenungsund, Sweden.
3. I am listed as the inventor of the subject of the above-identified application, and I have read and understand the application.
4. The patent subject instrument and method is being developed commercially and a null series of apparatuses has been produced. Actual marketing has not yet been initiated, but as a result of interactions with the research community, three instruments have already been placed with major industrial corporations (Procter & Gamble Technical Centres Ltd, PO Box 135, Cobalt Business Park, Silver Fox Way, Newcastle Upon Tyne, NE27 0QW, England and Akzo Nobel Surfactants AB, SE-444 85 Stenungsund, Sweden) and one research institute (YKI, Surface Chemistry Institute, Drottning Kristinas väg 45,

DRA/ETP



SE-114 28 Stockholm, Sweden). The industrial users have purchased the instrument, while YKI has the instrument on leasing terms.

5. The declared reasons for the early acquisition of the instrument by the present users are directly related to the present invention, since the principally valued features are:

- the possibility to scan liquid formulation properties, as expressed by the electronically gathered values of the dependable parameters, over extensive temperature and composition ranges with a minimum of labor effort and cost;
- the ready access to physical and chemical data over an extensive range of temperatures and concentrations gives rapid indications regarding temperature-concentration ranges of particular interest for further studies, which may and may not involve complementary instrumental techniques;
- the possibility to visualize data in three dimensional graphs adds to the ease and speed of data examination and information transfer;
- the possibility to quantitatively identify critical transition concentrations and temperatures and other characteristics on an extensive temperature-composition surface simultaneously in the same vessel. The fact that observed physical and chemical phenomena often are reflected by more than one measured parameter adds synergistically to the informative value;
- the possibility to get access to valuable data at various temperatures and concentrations without a need to drain the vessel between changes in temperatures and/or concentrations. This feature reduces experimental time, minimizes operator and environmental exposure to hazardous compounds and saves scarce or expensive experimental material;

6. I hereby declare that all statements made herein of my own knowledge are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 8 February 2006

By



Rolf Sköld
Professor, CEO Scanalys AB

Docket No.: 2964-0102P
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Rolf SKOLD

Application No.: 09/381,828

Confirmation No.: 004478

Filed: November 24, 1999

Art Unit: 1743

For: THE CHARACTERISATION OF PHYSICAL
AND CHEMICAL PROPERTIES OF A LIQUID
AND A DEVICE THEREFOR

Examiner: A. Soderquist

DECLARATION UNDER 37 C.F.R. § 1.132

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Rolf Skold, do declare and say as follows:

1. I am a graduate of Lund University, Faculty of Technology in Lund, Sweden. I received my MSc in Chemical Engineering in 1973 and finalized my PhD studies with a doctoral thesis in physical chemistry (thermochemistry) in 1976 at the same university. I held a post doctoral position at the University of Colorado at Boulder in 1976-1977.
2. I reside at Dragonvägen 11, SE-444 41 Stenungsund, Sweden.
3. I am listed as the inventor of the subject of the above-identified application, and I have read and understand the application.
4. The patent subject instrument and method is being developed commercially and a null series of apparatuses has been produced. Actual marketing has not yet been initiated, but as a result of interactions with the research community, three instruments have already been placed with major industrial corporations (Procter & Gamble Technical Centres Ltd, PO Box 135, Cobalt Business Park, Silver Fox Way, Newcastle Upon Tyne, NE27 0QW, England and Akzo Nobel Surfactants AB, SE-444 85 Stenungsund, Sweden) and one research institute (YKI, Surface Chemistry Institute, Drottning Kristinas väg 45,

DRA/ETP

SE-114 28 Stockholm, Sweden). The industrial users have purchased their instruments (see the attached Invoices) by cash payment on delivery, while YKI has the instrument on leasing terms.

5. The declared reasons for the early sales of the instrument to the present customers are directly related to the present invention, since the principally valued features are:

- the possibility to scan liquid formulation properties, as expressed by the collected values of the dependable parameters, over extensive temperature and composition ranges with a minimum of labor cost;
- the possibility to identify critical concentrations and temperatures and other characteristics on an extensive temperature-composition surface by means of more than one measured parameter, and simultaneously in the same vessel;
- the possibility to get access to valuable data at various temperatures and concentrations without a need to drain the vessel between changes in temperatures and concentrations, thus saving time and experimental material.

6. I hereby declare that all statements made herein of my own knowledge are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

July 18, 2006

By


Rolf Skold
(Title or Position)

Professor

Procter & Gamble Technical Centre

INVOICE

Attn. Dr Eric Robles
Whitley Rd, Longbenton, Newcastle Upon Tyne,
Tyne and Wear NE12 9SR,
United Kingdom

Invoice No: 2005-10-07
Delivery date: October 7, 2005
Your order No: GBP - 4500379790 - 1KB / 29.09.2005

Delivered items according to your order No GBP - 4500379790 - 1KB / 29.09.2005

1 pc. of a standard MPS-1-instrument with the following integrated measuring instruments:

- 1 pc. of a Hach 2100 AN turbidity meter
- 1 pc. of a Jumo Type 202535 conductivity meter
- 1 pc. of a Jumo Type 202530 pH meter
- 1 pc. of a RIL 2004 viscosity meter/stirrer

The following peripherals are included in the standard MPS-1-instrument:

- 1 pc. of a dual syringe Hamilton Microlab 500 dispenser.
- 1 pc. of a Personal Computer with the required software installed and quipped
 - o 1 pc. of a DVD RW according to current state of the art,
 - o 1 pc. of a National Instruments NI PCI-6014 Basic Multifunction I/O card or equivalent
 - o 4 pc. of serial communication connections,
 - o 2 pc. of USB communication connections.

Price each: **€48,410**

To be delivered later, due to delayed supply from manufacturer:

- 1 pc. Julabo Recirculating cooler type FC600

Price each: **€3,875**

TOTAL SUM THIS INVOICE €48,410

Net payable until: November 6, 2005

Phone:
+46 303 798 300

Fax:
+46 303 844 48

E-mail:
info@scanalys.com

Internet:
www.scanalys.com

Vat.No: SE 586583 8041 01
Reg.Office. SE-444 60 Sweden

Bankers
Svenska Handelsbanken AB

Clearing No.
6683

Account No
288374428

IBAN Code
SE 88 6000 000 0002 8837 4428

SWIFT Code
HANDSESS

FAKTURA
Nr 0601151

Akzo Nobel Surfactants AB
Eva Österberg
Box 857
444 40 STENUNGSUND

Levererade artiklar enligt offert nr. 2005-10-12 ANSAB

Faktura-nr:	0601151
Levererad till:	Eva Österberg/Christine Strandberg
Leveransdatum:	041115
Fakturadatum	060115
Förfallodag:	060131

• 1 st. standardinstrument av typ MPS-1 enligt offert	
Pris per styck:	452 149 SEK
• 1 st. kyltermostat typ Julabo FC600	
Pris per styck:	36 192 SEK
Summa utan moms:	488 341 SEK
Moms (25%):	122 085 SEK
Totalt betalas enligt denna faktura	610 426 SEK

Phone:
+46 303 798 300

Fax:
+46 303 844 48

E-mail:
info@scanalys.com

Internet:
www.scanalys.com

Vat.No: SE 58563 8041 01
Reg.Office. SE-444 60 Sweden

Bankers
Svenska Handelsbanken AB

Clearing No.
6883

Account No
288374428

Bankgiro
5275-1005